

### **REMARKS**

This amendment is submitted in response to the Examiner's Final Action dated February 25, 2008 and in support of an RCE filed herewith. Applicants have amended the claims to clarify key features of the invention, more completely recite some of the novel features within the independent claims, and overcome the claim objections and rejections. No new matter has been added, and the amendments place the claims in better condition for allowance. Applicants respectfully request entry of the amendments to the claims. The discussion/arguments provided below reference the claims in their amended form.

Applicants are not conceding in this application that those originally presented independent claims and their dependent claims are not patentable over the art cited by the Examiner. The present claim amendments and cancellations are only for facilitating expeditious prosecution of the application. Applicants respectfully reserve the right to pursue these original claims and other claims in one or more continuations and/or divisional patent applications.

### **DOUBLE PATENTING**

In the present Office Action, Claims 1, 9, 12 and 21 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 12 and 20 of U.S. Patent No 7,093,120. Applicants submit herewith a terminal disclaimer signed by an attorney of record in compliance with 37 CFR 1.321(c). This filing overcomes the double patenting rejection and places the claims in condition for allowance.

### **CLAIMS REJECTIONS UNDER 35 U.S.C. § 101**

In the present Office Action, the Examiner rejects Claims 12, 14-15, 17, 19-20 and 21-23 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Accordingly, Applicants have amended the claims so that these claims now recite statutory subject matter and are in compliance with §101 requirements. The amendments thus overcome the §101 rejection. Applicants, therefore, respectfully request entry of the amendments and removal of the §101 rejection.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

In the present Office Action, Claims 1-4 and 6-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Strange et al.* (U.S. Patent No. 6,965,989) in view of *Maffezzoni* (U.S. Patent No. 6,532,535). The combination of *Strange* and *Maffezzoni* does not render Applicants' claimed invention unpatentable because that combination does not suggest the subject matter recited by Applicants' claims, as now amended. While *Strange* does generally provide for accessing "a retained copy of the storage operating system kernel from a reserve location in the file server memory", that description is not synonymous with or suggestive of Applicants' claimed features. Specifically, *Strange* performs the initial boot from an externally provided kernel (Fig. 3, 130) (see col. 2, lines 40-47), and then utilizes a locally-stored single compressed image of the OS kernel to complete a partial (warm) reboot to reduce server downtime. Thus, with *Strange*, there is a requirement that the initial OS kernel be available and operational prior to the later partial reboot being possible. There is no switching/re-assigning of the full/complete boot process from the external kernel to one that is stored within the volume group. Later completion of the full boot (i.e., a reboot) would again require access to the external boot device.

Examiner acknowledges that *Strange* fails to teach or suggest features related to copying of a boot sector and establishing an alternate boot priority. Additionally, as introduced above, *Strange* also does not teach or suggest many of the other core features recited by Applicants' claims. Notably, Examiner relies on *Maffezzoni* to support the rejection of many of these features. However, even *Maffezzoni* is devoid of any teaching or suggestion of the novel features of Applicants' claimed invention. For example, no where within *Maffezzoni* is there a teaching or suggestion of (a) establishing an alternate boot priority and (b) copying the boot sector to multiple locations on the file system within the volume group. Col. 8, lines 16-25 does not teach or suggest these features. Col. 8, lines 38-67 also does not teach or suggest copying the boot install images to multiple disks within the volume group. The description provided merely references an ABS (Adaptec boot select) code that searches for a boot record among the drives connected to the system. Thus, it appears that Examiner has relied on a mischaracterization of *Maffezzoni* to support the rejection of this and other features of Applicants' claimed invention.

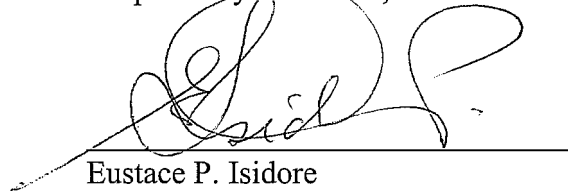
From the above discussion/arguments, which point out specific deficiencies in the teachings/suggestions of the combinations, and the evaluation thereof, it is clear that the combination of references does not suggest several features of Applicants' claimed invention. One skilled in the art would not find Applicants' invention unpatentable over the combination of references. Applicants' claims are therefore allowable over the combination.

### CONCLUSION

Applicants have diligently responded to the Office Action by amending the claims to overcome claim objections and §101 rejections, and to more comprehensive provide the novel features within the independent claims. Applicants have also provided discussion/arguments which explain why Applicants' claims are not obvious in light of the references provided or combinations thereof. The amendments and arguments thus overcome the §101 and §103 rejections, and Applicants respectfully request issuance of a Notice of Allowance for all claims now pending.

Applicants further respectfully request the Examiner contact the undersigned attorney of record at 512.343.6116 if such would further or expedite the prosecution of the present Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Isidore', is written over a horizontal line.

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